



U.S. Department
of Transportation

**Federal Aviation
Administration**

Aviation Safety

800 Independence Ave
Washington, DC 20591

In the matter of the petition of

Swift Air, LLC

For an exemption from
§§ 121.613, 121.623¹ and 121.625
of Title 14, Code of Federal
Regulations

Exemption No. 18235

Regulatory Docket No. FAA-2018-0668

DENIAL OF EXEMPTION

By letter posted to the docket on July 12, 2018, Mr. Douglass Chouinard, Director of Operations, Swift Air, LLC., 202 Centrepont Drive, Greensboro, N.C. 27409, petitioned the Federal Aviation Administration (FAA) on behalf of Swift Air LLC (Swift) for an exemption from §§ 121.613, 121.619(a) and 121.625 of Title 14, Code of Federal Regulations (14 CFR).² The proposed exemption, if granted, would allow Swift to dispatch airplanes under instrument flight rules when conditional language in a one-time increment of the weather forecast states the weather at the destination, alternate airport, or both airports could be below the authorized weather minimums when other time increments of the weather forecast state the weather conditions will be at or above the authorized weather minimums.

¹ The FAA notes that Swift seeks similar relief as that provided by current Exemption No. 3585, issued to Airlines for America (A4A) for relief from §§ 121.613, 121.619(a) and 121.625. Section 121.619(a) does not apply to Swift operations since it is a supplemental air carrier. The corresponding and applicable regulation is § 121.623. The FAA will consider this petition for exemption, as if Swift had requested relief from § 121.623.

² Swift's petition requests to "*continue* to Flight [sic] airplanes under instrument flight rules when conditional language in a one-time increment of the weather at the destination airport or alternate airport, or both airports could be below the authorized weather minimums when other time increments to the weather forecast state that weather conditions will be at or above the authorized weather minimums. Grant, 06/29/2001, Exemption No. 3585M." (emphasis added). However, the FAA notes that Exemption No. 3585M was never listed in Swift's Operations Specifications and Swift never exercised the relief provided by Exemption No. 3585M.

The petitioner requests relief from the following regulations:

Section 121.613, “Dispatch or flight release under IFR or over the top” prescribes that:

Except as provided in § 121.615, no person may dispatch or release an aircraft for operations under IFR or over-the-top, unless appropriate weather reports or forecasts, or any combination thereof, indicate that the weather conditions will be at or above the authorized minimums at the estimated time of arrival at the airport or airports to which dispatched or released.

Section 121.623, “Alternate Airport for destination: IFR or over the top: Supplemental Operations” prescribes that:

(a) Except as provided in paragraph (b) of this section, each person releasing an aircraft for operation under IFR or over-the-top shall list at least one alternate airport for each destination airport in the flight release.

(b) An alternate airport need not be designated for IFR or over-the-top operations where the aircraft carries enough fuel to meet the requirements of §§121.643 and 121.645 for flights outside the 48 contiguous States and the District of Columbia over routes without an available alternate airport for a particular airport of destination.

(c) For the purposes of paragraph (a) of this section, the weather requirements at the alternate airport must meet the requirements of the certificate holder's operations specifications.

(d) No person may release a flight unless he lists each required alternate airport in the flight release.

Section 121.625, “Alternate Airport weather minima” prescribes that:

Except as provided in §121.624 for ETOPS Alternate Airports, no person may list an airport as an alternate in the dispatch or flight release unless the appropriate weather reports or forecasts, or any combination thereof, indicate that the weather conditions will be at or above the alternate weather minima specified in the certificate holder's operations specifications for that airport when the flight arrives.

The petitioner supports its request with the following information:

Swift notes that it seeks similar relief as that provided by current Exemption No. 3585, as amended, issued to Airlines for America (A4A) for relief from §§ 121.613, 121.619(a) and 121.625. Section 121.619(a) does not apply to Swift operations since Swift is a supplemental air carrier and the corresponding and applicable regulation is § 121.623. The FAA will consider this petition for exemption as if Swift had requested relief from § 121.623.

The exemption would permit the flight release of Swift aircraft under instrument flight rules when conditional language in a one-time increment of the weather forecast states that the weather at the destination, alternate airport, or both airports could be below the authorized minimums when other time increments of the weather forecast state the weather conditions will be at or above the authorized weather minimums.

In its petition for exemption, if granted the relief requested, Swift proposed to include certain procedures in their General Operating Manual, as follows:

GOM revision

4.3. B Releasing a flight under Exemption 3585

- 1) Exemption 3585 allows the Flight Follower to release a flight to an airport or alternate when the TAF indicates, through the conditional statements (TEMPO, PROB, BECMG) that the weather could be below authorized landing minimums at the estimated time of arrival. The main body of the forecast MUST indicate that the weather will be ABOVE authorized minimums at the estimated time of arrival.
- 2) Alternate Requirements during Marginal Conditions:
 - a. For a Destination airport, marginal is defined as weather that is forecasted (in the conditional statements) to be at published landing minimums for the approach expected to be in use.
 - b. For an Alternate airport, marginal is defined as weather forecasted to be at the landing minimums derived from the alternate airport weather minimums Table 1, Ops Specs C055.
 - c. When the weather at the destination and first alternate are marginal, a second alternate will be designated.
- 3) When releasing a flight under Exemption 3585, the following statement must be entered in the remarks section of the release:
 - a. "Released under Exemption 3585—CREW MONITOR ACARS"
 - b. The forecast weather conditions at the destination airport must not be less than one-half of the lowest weather minimum visibility value established for the instrument approach procedure expected to be in use at the destination.
 - c. The forecast weather conditions at the first alternate airport must not be less than one-half of the alternate weather minimum ceiling and visibility values specified in Ops Specs C055 operations specifications for that airport.

d. With respect to the second alternate airport listed in the flight release pursuant to this exemption, the METAR, the appropriate time increment of the TAF, or any combination thereof for that airport must indicate in the main body and remarks section of the METAR or TAF that forecast weather conditions will be at or above the alternate airport weather minimum ceiling and visibility values specified in Swift Air's operations specifications for that airport.

FROM

The FM group is used when a rapid change, usually occurring in less than one hour, in prevailing conditions is expected. Typically, a rapid change of prevailing conditions to more or less a completely new set of prevailing conditions is associated with a synoptic feature passing through the terminal area (cold or warm frontal passage). Appended to the FM indicator is the four-digit hour and minute the change is expected to begin and continues until the next change group or until the end of the current forecast.

1) A FM group will mark the beginning of a new line in a TAF report. Each FM group contains all the required elements -- wind, visibility, weather, and sky condition. Weather will be omitted in FM groups when it is not significant to aviation. FM groups will not include the contraction NSW.

BECOMING

The BECMG group is used when a gradual change in conditions is expected over a longer time period, usually two hours. The time period when the change is expected is a four-digit group with the beginning hour and ending hour of the change period which follows the BECMG indicator. The gradual change will occur at an unspecified time within this time period. Only the conditions are carried over from the previous time group.

TEMPORARY

The TEMPO group is used for any conditions in wind, visibility, weather, or sky condition, which are expected to last for generally less than an hour at a time (occasional) and are expected to occur during less than half the time period. The TEMPO indicator is followed by a four-digit group giving the beginning hour and ending hour of the time period during which, the temporary conditions are expected. Only the changing forecast meteorological conditions are included in TEMPO groups. The omitted conditions are carried over from the previous time group.

4.6 A. Alternate Airports [14 CFR 121.197/623 Ops Specs C055]

At least one alternate airport meeting the alternate weather requirements of the company's Operations Specifications shall be listed on the flight release for each destination airport before an aircraft is released under IFR or over the top.

1. If no alternate is specified in the Flight Release (flights outside of the 48 contiguous states and the District Of Colombia), there must be enough fuel onboard to fly to the destination airport and then to fly for two hours using normal cruise fuel consumption.
2. No airport may be named as an alternate airport unless weather reports and/or forecast indicate that it will have alternate minimums at the time the flight would arrive there, and the weight at anticipated time of arrival will not exceed maximum landing weight for the runway.
3. When weather reports and/or forecast indicate marginal conditions at the destination and primary alternate airports for the estimated time of use, a second destination airport will be specified in the Flight Release.
4. All releases must have at least one alternate listed for the destination. A second alternate is required if Flight under exemption 3585.
5. For flights outside of the contiguous U.S., the flight may be released provided that the fuel requirements of 14 CFR 121.643/645 are met.

4.6 B. Alternate Airport Weather Minimums [14 CFR 121.623/625/631]

No person may list an airport as an alternate airport in the flight release unless the appropriate weather reports or forecasts, or any combination thereof, indicate that the weather conditions will be at or above the alternate weather minimums specified in Swift Air's Operations Specifications C055 for that airport when the flight arrives. The ceiling and visibility minimums for Alternate Airports (Takeoff or Destination) are derived from the Operation Specifications only.

1. Alternate Airport weather minimums apply primarily to Pre-Release and Pre-Flight Planning and do not necessarily designate the actual weather minimums required for landing at that airport.
2. While the flight is en route to the destination, the alternate airport weather must remain at or above the prescribed alternate airport minimums. 14 CFR 121.631(b)
3. Once the flight has diverted to its alternate airport, this airport now becomes the primary destination and alternate minimums no longer apply. Regular published minimums for landing at that airport as a destination may apply.
4. Weather reports and/or forecasts, or any combination thereof, must indicate that weather conditions will be at or above alternate minimums at the time the flight would arrive at the alternate (14 CFR 121.625) in order to release the flight. Relief

from this regulation for regulation for the FIRST required alternate can be found in Exemption 3585 information located in sections: 4.3 B

5. Alternate minimums are the ceiling and visibility minimums that are derived from the Alternate minimums table in C055 of the Operations Specifications. Alternate minimums apply to releasing the aircraft and do not designate the actual approach minimums at the alternate airport. Once a flight diverts from its destination to the designated alternate, the flight will use the actual approach minimums at the designated alternate to perform an instrument approach into the alternate airport.
6. If any alternate drops below authorized alternate minimums or the First alternate if using Exemption 3585, in which case diversion to the Second alternate would be required unless a new suitable First alternate is added to the release by amendment with OCC. This amended First [sic] amended [sic] First alternate my [sic] still be selected using Exemption 3585, but all fuel requirements of section 4.8 must be met., [sic] the Flight Release shall be revised to include a new alternate(s) that meets alternate minimums. An alternate which is forecast at or above minimums for the ETA, but which is below limits at the time of the release may be used.

4.6. C. IFR Landing Minimums / Destination Weather [14 CFR 121.195/651/652]

Releasing a flight under Exemption 3585

1. Exemption 3585 allows the dispatcher to release a flight to an airport OR alternate when the TAF indicates, through the conditional statements (TEMPO, PROB, BECMG) that the weather could be below authorized landing minimums at the estimated time of arrival. The main body of the forecast MUST indicate that the weather will be ABOVE authorized minimums at the estimated time of arrival.
2. Exemption 3585 is applicable to 121.613, 121.619, and 121.625. In accordance with the fuel requirements contained in the exemption.

4.8 FUEL QUANTITY REQUIREMENTS

FAR: 121.645

Accurate fuel calculations must be made considering destination weather, alternate weather, ATC delays, wind, fuel for one instrument approach and possible missed approach at destination, any conditions that may delay landing on arrival, and reserve fuel requirements. These calculations must be recorded on the Flight Release form prior to each departure.

A. For Flights Within The 48 Contiguous United States And The District Of Columbia

Fuel requirements are considered to be met for operations within the contiguous 48 states if there is sufficient fuel on board to:

1. Fly to and land at the airport to which released, and
2. Fly to and land at the most distant alternate specified in the flight release, and
3. Thereafter, fly for 45 minutes at normal cruising fuel consumption, and
4. Meet any anticipated ATC delays.
5. Fuel required for Flight under exemption 3585.

B. For Flights Outside The 48 Contiguous United States And The District Of Columbia

The minimum fuel for turbojet aircraft in operations outside the contiguous states shall not be less than the sum of the following:

1. The fuel required to fly to and land at destination. (as specified in the flight release)
2. Enough fuel to fly for 10 percent of the time required to fly from the airport of departure to the airport to which it was released and land.
3. Enough fuel to fly to and land at the most distant alternate (if required) as listed on the release.
4. Enough fuel to hold for 30 minutes at 1500 feet above the alternate airport, or the destination if no alternate is required.
5. Fuel required for Flight under exemption 3585.

C. For Flights To An Airport For Which An Alternate Is Not Specified FAR: 121.645(c)

The minimum fuel for turbojet aircraft over a route approved without an available alternate airport for a particular destination is;

1. The fuel to fly to and land at the destination, and
2. The fuel to fly for at least two hours at normal cruising fuel consumption.

Flight Followers provide the PIC with the minimum required fuel load. Swift Air flights may not be released or takeoff unless the appropriate minimum fuel requirements (USA or international fuel requirements) is met before takeoff. All fuel requirements shall take into account known traffic and weather delays, the expected wind enroute, and any deferred maintenance item that may require an increase in fuel load. The minimum required fuel is generated by the Flight Followers inputs into the Computerized Flight Plan and Release system, which takes into account the following factors:

- (1) The forecasted winds aloft
- (2) One instrument approach and possible missed approach at destination
- (3) The alternate, holding, and contingency fuel required by either 14 CFR 121.643 (USA) or 14 CFR 121.645 (international)
- (4) Fuel required for Flight under exemption 3585.

Swift also proposed additional Quiz questions to be added to the Flight Follower and Pilot Training curricula, as follows:

1) Explain the purpose of Exemption 3585? [sic]

It allows a 121 flight to be released to a destination airport or alternate when the TAF is forecasting below authorized weather minimums at the ETA. [The remarks section of the TAF can forecast that weather could be below authorized weather mins at ETA, eg TEMPO, BECMG, PROB. However, the body of the TAF must indicate that the weather will be at or above authorized weather mins at ETA.]

2) When must a second alternate be filed under Exemption 3585?

A second alternate must be listed on the Flight release if either the destination airport or the first alternate airport TAF contains conditional phrases indicating weather below authorized minimums.

3) What is the lowest weather allowable in the remarks section of the forecast for the destination under 3585?

TAF weather conditions shall not be less than 1/2 of the lowest weather minimum visibility value established for the instrument approach expected to be used.

4) What must be added to a Flight release for a flight operating under Exemption 3585?

"Released under Exemption 3585" must be on the release. This exemption may only be used for destinations within the U.S

Swift believes that the relief requested will not adversely affect safety. Swift further notes that granting this relief will increase safety because they will establish requirements and procedures for increased scrutiny of weather and fuel conditions during the en route portion of the flight, a requirement of a second alternate airport and an increase in minimum fuel requirements to reach the second alternate.

The FAA's analysis is as follows:

The FAA has considered the petitioner's request and supporting materials and finds that a grant of exemption would not be in the public interest or provide a level of safety equivalent to that provided by the current regulations.

Additionally, the FAA finds that, although Swift has requested a summary grant based on Exemption No. 3585, the pertinent regulations and circumstances are not similar in all material respects to those presented in their petition.

As noted previously, Swift notes that it seeks similar relief as that provided by current Exemption No. 3585, issued to Airlines for America (A4A) for relief from §§ 121.613, 121.619(a) and 121.625. Section 121.619(a) does not apply to Swift operations as a supplemental air carrier and the corresponding and applicable regulation is §121.623. The FAA will consider this petition for exemption, as if Swift had requested relief from §121.623.

The FAA notes that Exemption No. 3585 applies to domestic air carriers that have a dispatch system. Exemption No. 3585 provides certain relief from §§ 121.613, 121.619(a), and 121.625, which requires the domestic air carrier to have a dispatch system in order to utilize the exemption as originally written. Swift assumes that a grant of exemption from § 121.623 along with their proposed conditions and limitations would provide an equivalent level of safety as that provided by current Exemption No. 3585.

Swift contends that public safety would not be affected while utilizing § 121.623 alternate weather requirements for its part 121 supplemental operations because all flights would be released and followed by a Swift Flight Followers. However, § 121.623 has a substantive difference regarding the limited training and qualification requirements for “each person releasing an aircraft” (flight follower) for operations for carriers that operate under part 121 supplemental rules, from the requirements of §121.619(a).

There are key differences between the requirements for a part 121 domestic air carrier and a part 121 supplemental air carrier that must be considered in the FAA’s evaluation of whether the requested relief would maintain an equivalent level of safety. Exemption No. 3585 as originally granted was for a domestic air carrier with certificated aircraft dispatchers who have joint responsibility with the pilot in command (PIC). For example, § 121.533, which includes provisions regarding operational control for domestic operations, requires both the PIC and the aircraft dispatcher to be jointly responsible for the preflight planning, delay, and dispatch release of a flight. In contrast, § 121.537, which includes provisions regarding operational control for supplemental operations, requires the PIC and the director of operations (not the flight follower) to be jointly responsible for the initiation, continuation, diversion and termination of a flight.

In 1985, the FAA denied a request for similar relief as that provided in Exemption No. 3585 for a part 121 supplemental air carrier with only a flight following system. In the denial of a petition from Trans International Airlines (TIA) (Regulatory Docket No. 24324) requesting similar relief to that of Exemption No. 3585, the FAA noted that Exemption No. 3585, as amended, grants certain air carriers that are required to comply with the domestic air carrier rules of Part 121, an exemption from Sections 121.613, 121.619(a), and 121.625 of the regulations, subject to certain conditions and limitations. In the denial, the FAA generally noted that though it is not specifically stated in the original 1982 grant of exemption (Exemption No. 3585, Regulatory Docket 22451), the underlying rationale supporting the exemption is based on certain Part 121 requirements which are applicable to domestic air carriers, that are more stringent in certain areas than those applicable to supplemental air carriers.

For example, 14 CFR §§ 121.99 and 121.101 contain requirements for certain communications and weather reporting facilities for domestic air carriers that are more stringent than those required for supplemental carriers. Additionally, Part 121, Subpart U, contains domestic dispatch requirements that are more stringent than flight release requirements. Further, domestic air carriers are required by Section 121.107 to have enough dispatch centers, adequate for the operations to be conducted, to ensure proper operational control of each flight and those dispatch centers must be staffed with dispatchers that have been certificated and have completed specific Part 121, Subpart N, training requirements. Also, in domestic operations, the pilot in command (PIC) and the dispatcher share joint responsibility for the dispatch of a flight. Additionally, during a flight, the aircraft dispatcher continues to monitor flight progress and must provide the PIC with any additional available information regarding meteorological conditions such as clear air turbulence, thunderstorms, and low altitude wind shear, as well as any irregularities of facilities or services that may affect the safety of the flight.

The cumulative effect of these relatively more stringent dispatch requirements allowed the FAA, by imposing specific conditions and limitations, to establish a level of safety equivalent to that provided by the rule and, therefore, grant an exemption to part 121 certificate holders conducting domestic air carrier operations. Similar dispatch release requirements are not present in the rules applicable to supplemental air carrier operations and, thus, an exemption from those supplemental rules is not warranted.

The FAA notes that similar relief to that provided in Exemption No. 3585 was provided to Federal Express (FEDEX), a part 121 supplemental air carrier, in 1992. (Regulatory Docket No. 25983) However, in the grant of exemption, the FAA found that an equivalent level of safety could only be maintained by those certificate holders that operate under the domestic rules of part 121, which includes the use of a dispatch system. In fact, in the grant of exemption, in order to ensure that an equivalent level of safety as that of the affected regulations was maintained, the FAA established a limitation that prior to initiating operations under the exemption, FEDEX must amend its operations specifications to comply with all regulations applicable to domestic air carrier operations, except those pertaining to the certification of air carriers. This included ensuring that all FEDEX aircraft dispatchers hold aircraft dispatcher certificates issued under subpart C of part 65 and are properly qualified under part 121, Subpart P, before permitting those persons to serve in operations conducted under the exemption.

Although Swift has provided the FAA with proposed quiz questions and GOM revisions that reference dispatchers, the FAA notes that Swift's supplemental operations are not required to be conducted with dispatchers, nor does Swift conduct operations with aircraft dispatchers. The FAA finds that the petitioner has failed to demonstrate how Swift, a part 121 supplemental operation with flight following, would maintain a level of safety equivalent to that of the affected regulations.

Therefore, the FAA finds that a grant of exemption would not be in the public interest and would not provide a level of safety equivalent to that provided by the current regulations.

The FAA's Decision:

In consideration of the foregoing, I find that a grant of exemption would not provide an equivalent level of safety. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 106(f), 40113, and 44701, delegated to me by the Administrator, the Swift Air, LLC. petition for an exemption from §§ 14 CFR 121.613, 121.623(a) and 121.625 is denied.

Issued in Washington, D.C., on May 30, 2019

/s/

Robert C. Carty

Deputy Executive Director, Flight Standards Service